

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 171

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

RELATING TO HIGHWAYS; AMENDING SECTION 40-2319, IDAHO CODE, TO PROVIDE THAT THE COUNTY OR HIGHWAY DISTRICT SHALL NOT BE LIABLE FOR ANY INJURY OR DAMAGE CAUSED BY OR ARISING FROM AN UNAUTHORIZED ENCROACHMENT OR FAILURE TO REMOVE THE UNAUTHORIZED ENCROACHMENT UPON A HIGHWAY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 40-2319, Idaho Code, be, and the same is hereby amended to read as follows:

40-2319. ENCROACHMENTS -- REMOVAL -- NOTICE -- PENALTY FOR FAILURE TO REMOVE -- REMOVAL BY COUNTY OR HIGHWAY DISTRICT -- ABATEMENT. (1) If any highway or public right-of-way under the jurisdiction of a county or highway district is encroached upon by gates, fences, buildings, or otherwise, the appropriate county or highway district may require the encroachment to be removed. If the encroachment is of a nature as to effectually obstruct and prevent the use of an open highway for vehicles, the county or highway district shall immediately cause the encroachment to be removed.

(2) Notice shall be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence if he resides in the highway jurisdiction. If not, it shall be posted on the encroachment, specifying the place and extent of the encroachment, and requiring him to remove the encroachment within ten (10) days.

(3) If the encroachment is not removed, or commenced to be removed, prior to the expiration of ten (10) days from the service or posting the notice, the person who caused, owns or controls the encroachment shall forfeit up to one hundred fifty dollars (\$150) for each day the encroachment continues unremoved.

(4) If the encroachment is denied, and the owner, occupant, or person controlling the encroachment, refuses either to remove it or to permit its removal, the county or highway district shall commence in the proper court an action to abate the encroachment as a nuisance. If the county or highway district recovers judgment, it may, in addition to having the encroachment abated, recover up to one hundred fifty dollars (\$150) for every day the nuisance remained after notice, as well as costs of the legal action and removal.

(5) If the encroachment is not denied, but is not removed within five (5) days after the notice is complete, the county or highway district may remove it at the expense of the owner, occupant, or person controlling the encroachment, and the county or highway district may recover costs and expenses, as well as the sum of up to one hundred fifty dollars (\$150) for each day the encroachment remained after notice was complete.

1 (6) The county or highway district shall not be liable for any injury or
2 damage caused by or arising from an unauthorized encroachment or failure to
3 remove the unauthorized encroachment.

4 (7) Nothing in this chapter shall be construed to limit, abrogate or su-
5 persede the provisions of this title governing the power, authority or ju-
6 risdiction of a county or highway district, including the authority to regu-
7 late the use of highways or public rights-of-way for pedestrian and motorist
8 safety.